



IOWA UNDERGROUND STORAGE TANK FUND

Susan E. Voss, Chairperson

Scott M. Scheidel, Administrator

Board Members:

Michael L. Fitzgerald ❖ Jeff W. Robinson ❖ Cathy A. Rottinghaus ❖ James M. Holcomb
Jeffrey R. Vonk ❖ Delia A. Meier ❖ Douglas M. Beech

July 21, 2005

Ms. Liz Christiansen
Department of Natural Resources
502 East 9th Street
Des Moines IA 50319-0034

RE: 28E Agreement

Liz:

I have enclosed a fully-executed original 28E agreement between the Department of Natural Resources (DNR) and the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Fund), for funding assistance for the UST Section for fiscal year 2006.

This agreement has been filed with the Secretary of State. In addition, I have requested the filing fee from the Treasurer's Office to file the agreement with the Polk County Recorder.

Sincerely,

Lacey Skalicky
Consultant

Enclosure

Cc: Elaine Douskey, DNR

Preparer: David S. Steward, Assistant Attorney General PH: 515-281-5351 FAX: 515-242-6072
IOWA DEPARTMENT of JUSTICE, State Capitol Complex, Des Moines, IA 50319
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28E AGREEMENT
**BETWEEN the IOWA COMPREHENSIVE PETROLEUM UNDERGROUND
STORAGE TANK FUND BOARD, and the IOWA DEPARTMENT OF NATURAL
RESOURCES for FUNDING AND MANAGEMENT of the UNDERGROUND STORAGE
TANK SECTION of the IOWA DEPARTMENT OF NATURAL RESOURCES**

This Agreement is entered into by and between the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (hereinafter "Board"), with its Administrator's office located at 2700 Westown Parkway, Suite 320, W. Des Moines, Iowa 50266, and the Iowa Department of Natural Resources (hereinafter "DNR"), located at 502 E. 9th Street, Des Moines, IA 50319. This Agreement is entered into pursuant to Chapter 28E of the Code of Iowa, and is effective as of the date it is fully executed by all parties.

I. PURPOSE

The purpose of this Agreement is to provide the terms under which the Board will provide funding to the DNR's Underground Storage Tank ("UST") Section. It is a primary goal of this Agreement to enable the UST Section, by July 1, 2006, to operate on a budget equivalent to the UST tank management fees collected by the DNR. Accordingly, it is the understanding of both parties that any future agreements to fund the UST Section by the Board shall be for no more than an amount equivalent to the UST tank management fees collected and allocated to the Board pursuant to Iowa Code sections 455B.479 and 455G.8"3".

In consideration for the receipt of Board funds, the DNR will develop and implement rules and procedures allowing for the transition of routine inspections of UST sites currently conducted by the DNR to qualified private entities or individuals (hereinafter "third-parties"). Also during the term of this Agreement, the DNR will develop and implement procedures allowing for the complete transfer of the Board's UST installation inspector certification program to the DNR. The Parties do not intend to create a separate legal entity under this Agreement.

II. TERM

This Agreement shall begin on July 1, 2005, and terminate on June 30, 2006, unless earlier terminated in accordance with this Agreement. The Agreement may be renewed for up to two (2) additional one-year extensions by the written agreement of all parties on terms stated therein.

III. ADMINISTRATION

This Agreement shall be administered by the DNR in consultation with the Board and its Administrator. All administrative decisions concerning this Agreement shall be undertaken pursuant to the terms outlined herein.

IV. ACQUIRING AND HOLDING OF PROPERTY UNDER THIS AGREEMENT

All real and personal property used or acquired under the terms of this Agreement shall be held in the name of the DNR.

V. DNR RESPONSIBILITIES

Milestone 1: By October 1, 2005, the DNR shall:

- a. have administrative rules and guidance documents drafted and submitted to the Environmental Protection Commission concerning the transition of routine inspections of UST sites currently conducted by the DNR to qualified third-parties;
- b. complete no less than 300 routine inspections of UST sites since July 1, 2005, with no less than 25 total inspections completed by each DNR field office.

Milestone 2: By January 2, 2006, the DNR shall:

- a. have administrative rules filed, and noticed to the public concerning the transition of routine inspections of UST sites currently conducted by the DNR to qualified third-parties;
- b. complete no less than 600 routine inspections of UST sites since July 1, 2005, with no less than 50 total inspections completed by each DNR field office.

Milestone 3: By April 1, 2006, the DNR shall:

- a. have administrative rules effective, and have all procedures completed, to allow for DNR acceptance of UST inspection reports by qualified third-parties;
- b. complete no less than 900 routine inspections of UST sites since July 1, 2005, with no less than 75 total inspections completed by each DNR field office.

Milestone 4: By June 30, 2006, the DNR shall:

- a. enter into a separate 28E agreement with the Board allowing for the complete transfer of the Board's UST installation inspector certification program to the DNR by July 1, 2006;
- b. complete no less than 1,200 routine inspections of UST sites since July 1, 2005, with no less than 100 total inspections completed by each DNR field office.

The DNR may use inspections completed by qualified third-parties to meet part (b) of Milestones 1-4.

VI. BOARD RESPONSIBILITIES

The Board shall provide the DNR with funds, subject to contingencies stated in this section, in the amount of Three Hundred Thousand Dollars (\$300,000), payable in quarterly installments of Seventy-Five Thousand Dollars (\$75,000), commencing on October 3, 2005, and thereafter on January 3, 2006, April 3, 2006, and June 30, 2006.

Additionally, the Board shall provide the DNR with funds in an amount equivalent to the UST tank management fees collected and allocated to the Board during the term of this Agreement. The Board has estimated such tank management fees to be approximately Four Hundred Thousand Dollars (\$400,000), and it shall pay this amount in quarterly installments of One Hundred Thousand Dollars (\$100,000), commencing on October 3, 2005, and thereafter on January 3, 2006, April 3, 2006, and June 30, 2006. If by June 30, 2006, the Board determines the actual amount the UST tank management fees allocated to the Board during the term of this Agreement varies from the estimated amount of \$400,000 by 10% or more, the Board shall adjust the June 30, 2006 installment accordingly to reflect the actual amount allocated to the Board. If, however, the variance between the estimated amount of UST tank management fees allocated to the Board during the term of this Agreement and the actual amount is less than 10%, the final installment shall remain unchanged.

A. Payments Contingent on Completion of Subpart (a) of Milestones 1-4.

A \$75,000 installment due on a milestone date shall be reduced by \$25,000 if subpart (a) of the Milestone is not met by the milestone date contained in Section V of this Agreement.

B. Payments Contingent on Completion of Subpart (b) of Milestones 1-4.

A \$75,000 installment due on a milestone date shall be reduced by \$50,000 if subpart (b) of the Milestone is not met by the milestone date contained in Section V of this Agreement.

VII. FINANCING

The Board shall pay all costs associated with the administration of this Agreement in accordance with the terms of paragraph VI of this Agreement. The DNR shall use the funds provided by the Board exclusively for the operation of the DNR's UST Section, including the development and implementation of the transition of routine UST inspections to third-parties. Use of the funds for any other DNR sections or programs is not authorized by this Agreement.

VIII. AMENDMENT

This Agreement may be amended from time to time by written agreement of the Parties. All amendments shall be in writing, signed by both Parties, and filed with the Secretary of State and recorded with the Polk County Recorder.

IX. TERMINATION

A. Termination Upon Mutual Consent. This Agreement may be terminated upon the mutual written consent of the parties.

B. Termination By One Party. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations, conditions, and procedures set forth below, either party to this Agreement shall have the right to terminate this Agreement without penalty by giving sixty (60) days' written notice to the other party to the Agreement as a result of any of the following:

1. There are insufficient funds available to allow a party to fulfill its obligations under this Agreement;
2. A change in the law prevents or substantially impairs a party's ability to participate in this Agreement; or
3. The DNR fails to meet two consecutive Milestone requirements set forth in Section V of this Agreement.

X. NOTICES

Whenever notices and correspondence are to be given under this Agreement, the notices shall be given by personal delivery to the other party, or sent by mail, postage prepaid, to the other party as follows:

To the Board

Iowa UST Fund Board
2700 Westown Parkway, Suite 320,
W. Des Moines, Iowa 50266

To the DNR

Iowa Department of Natural Resources
UST Section
502 E. 9th Street
Des Moines, IA 50319

XI. APPLICABLE LAW

This Agreement is to be governed by the laws of the State of Iowa.

XII. FILING AND RECORDING

It is agreed the Board will file this Agreement with the Secretary of State and record it with the Polk County Recorder as required by Iowa Code section 28E.8.

IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the parties have entered into this 28E Agreement and have caused their duly authorized representatives to execute this 28E Agreement.

**IOWA COMPREHENSIVE PETROLEUM
UNDERGROUND STORAGE TANK FUND
BOARD**

BY: Susan Voss
Susan Voss, Chair

DATE: July 12, 05

**IOWA DEPARTMENT OF NATURAL
RESOURCES**

BY: Liz Christiansen
{Name & Position} Liz Christiansen,
Dept Director

DATE: 06-21-05